

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KIM ANDERSON, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

RENT-A-DAUGHTER, *et al.*,

Defendants.

CASE NO. 1:22-cv-00143

JUDGE BRIDGET MEEHAN BRENNAN

JOANNE ACOFF, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

RENT A DAUGHTER,

Defendant.

CASE NO. 1:22-cv-00193

JUDGE BRIDGET MEEHAN BRENNAN

**AMENDED JOINT MOTION FOR
FINAL APPROVAL OF RULE 23 CLASS ACTION SETTLEMENT**

Plaintiff Kim Anderson (“Representative Plaintiff” or “Class Representative”) and Plaintiff Joanne Acoff, on behalf of themselves and the members of the proposed settlement collective and class, and Defendants Rent-A-Daughter Corp., Rent-A-Daughter, LLC, Rent-A-Daughter Franchising, LLC, Rent-A-Daughter Concierge Service, LLC, and Nadine Glatley (“Defendants”) respectfully and jointly move the Court to enter a final order approving, as fair, reasonable, and adequate the Class Action Settlement pursuant to Fed. R. Civ. P. 23(e), and entry of a final judgment on the Ohio Rule 23 portion of the class settlement for which final approval is now being requested. A proposed Final Order and Judgment is attached as **Exhibit 1**.

On August 9, 2022, the Parties filed their Joint Motion for Final Approval of FLSA Settlement and Preliminary Approval of Rule 23 Class Action Settlement. (ECF No 36). An Amended Settlement Agreement was later filed. (ECF Nos. 37-38). On September 28, 2022, the Court approved the FLSA settlement and preliminarily approved the Rule 23 Class Settlement. (ECF No. 39).

The court-approved notice process completed on November 28, 2022. *See* Declaration of Settlement Administrator, Jeff Mitchell of Analytics Consulting LLC (“Mitchell Dec.”), ECF No. 40-2 at PageID #: 433, ¶12.

On December 1, 2022, the Parties filed their Joint Motion for Final Approval of Rule 23 Class Action Settlement. (ECF No. 40). On January 27, 2023, the Court directed the Parties to refile their motion for final approval of class settlement and proposed final order, specifying the amount of money the settlement allocates for service awards, attorneys' fees, litigation expenses, and settlement administrative expenses on or before January 30, 2023. (1/27/23, Order [non-document]). The Fairness Hearing is scheduled for January 31, 2023. (ECF No. 39 at PageID #: 418, ¶14).

The Settlement resolves bona fide disputes involving alleged overtime violations under the Fair Labor Standards Act (FLSA) and Ohio’s overtime statute, O.R.C. § 4111.03. Points and authorities supporting approval of the settlement were submitted by the Parties in their Joint Motion for Final Approval of FLSA Settlement and Preliminary Approval of Rule 23 Class Action Settlement and attached thereto were the current and former employees covered by the Settlements (ECF Nos. 36; 36-1 at PageID #: 268-74).

Rule 23 Class Settlement Notices and Class Action Fairness Act (CAFA) notices were sent out on or about October 28, 2022. There was a delay in obtaining the complete list from

Defendants' Counsel due to various factors, including legacy systems which made creation of the complete list difficult. During the process, duplicates and individuals who were not class members were excluded, resulting in a preliminary class count of 206 individuals participating in settlement. (Mitchell Dec., ECF No. 40-2, at PageID #: 434, ¶7).

The Court-approved Notice gave eligible Class Members 30 days in which to request exclusion from the Ohio Rule 23 Class Settlement or to object to the Settlement. (ECF No. 36-1 at PageID #: 256, ¶¶35, 37). Only 26 mailings were returned as undeliverable, 5 of which the claims administrator was able to find an updated or forwarding address. (Mitchell Dec. ECF No. 40-2, at PageID #: 435, ¶11). There were 2 exclusions and no objections to the Ohio Rule 23 Class Settlement. (*Id.* at ¶¶12-13).

As explained in the Parties' August 9th joint approval motion (ECF No. 36), the proposed allocations to the Representative Plaintiff and the Class Members were based on disputed but agreed estimates of unpaid pre-shift work per day and week, and the Individual Payments to the Representative Plaintiff and Class Members represent a substantial percentage of their claimed damages. For example, "the Total Settlement Amount exceeds the calculated expected value. Also, the estimated net amount for Class distribution exceeds 168% of the calculated expected value exclusive of fees. Further, the new average settlement amount exceeds \$634, per the reallocations outlined below, with the previous minimum payments of \$25 now increased to \$26.37. (ECF No. 36, at PageID #: 234, ¶B.1).

The Total Settlement Amount is \$205,000. (Amended Agreement, ECF No. 38 at PageID #: 354, ¶14). The Service Award amount allocated to Class Representative Anderson is \$3,000.00. (*Id.* at PageID #: 3358, ¶31(c)). The Release Payment amount allocated to Plaintiff Joanne Acoff is \$2,000.00. (*Id.* at ¶31(d)). The amount allocated for attorneys' fees is one-third of the Total

Settlement Amount, or \$68,333.33, and the amount allocated for Class Counsel's costs is \$2,176.54. (*Id.* at ¶31(e)). As noted above, there were two exclusions from settlement, Barbara Jones and Ashinte Drake. (Doc #: 40-2 at PageID #: 435, ¶12, fn.2).¹ Their combined amount of \$278.54, was reallocated at \$1.37 per Class Member.² The final class allocations are listed in attached Exhibit 2.

The cost of administration is being paid by Defendants outside the Total Settlement Amount, and therefore will not affect allocations. (Amended Agreement, ECF No. 38 at PageID #: 354, ¶14; PageID #: 359, ¶31(a)). The final cost is not yet known due to additional work that may need to be done during the course of distributing payments. However, the estimate at the time of settlement was \$7,056.00.³

CONCLUSION

For the reasons addressed herein and in the Joint Motion for Final Approval of FLSA Settlement and Preliminary Approval of Rule 23 Class Action Settlement, the Parties respectfully ask the Court to approve the Ohio Rule 23 Class Settlement and enter the proposed Order Granting Final Approval of Class Action Settlement, and to direct the Clerk of the Court to enter the Order Approving this Ohio Rule 23 Class Settlement and the September 28, 2022, Order Approving the FLSA Settlement.

¹ See also, ECF No. 36-1 (Ashinte Drake, \$98.99, at PageID #: 269, No. 43; Barbara Jones, \$179.55, at PageID #: 270, No. 85).

² Excel formula [= (98.99+179.55)/(206-2)].

³ The Settlement Administrator's written estimate can be submitted for in camera review, if the Court so directs.

Respectfully submitted,

/s/ Robi J. Baishnab

Robi J. Baishnab (0096195)
NILGES DRAHER LLC
1360 E. 9th St., Suite 808
Cleveland, OH 44114
Phone: 216-230-2955
Fax: 330-754-1430
rabaishnab@ohlaborlaw.com

Shannon M. Draher (0094304)
Hans A. Nilges (0076017)
NILGES DRAHER LLC
7266 Portage Street, NW, Suite D
Massillon, OH 44646
Phone: 330-470-4428
Fax: 330-754-1430
hans@ohlaborlaw.com
sdraher@ohlaborlaw.com

Alanna Klein Fischer (0090986)
Anthony J. Lazzaro (0077962)
Lori M. Griffin (0085241)
Matthew S. Grimsley (0092942)
THE LAZZARO LAW FIRM, LLC
The Heritage Bldg., Suite 250
34555 Chagrin Boulevard
Moreland Hills, OH 44022
Phone: 216-696-5000
Facsimile: 216-696-7005
alanna@lazzarolawfirm.com
anthony@lazzarolawfirm.com
lori@lazzarolawfirm.com
matthew@lazzarolawfirm.com

Plaintiffs' Attorneys

/s/ Ryan T. Neumeyer (with consent)

Ryan T. Neumeyer (0076498)
Karina R. Conley (0093906)
Julia G. Ross (0099095)
MCDONALD HOPKINS LLC
600 Superior Ave. East, Suite 2100
Cleveland, OH 44114
Phone: 216-348-5400
Fax: 216-348-5474
rneumeyer@mcdonaldhopkins.com
kconley@mcdonaldhopkins.com
jross@mcdonaldhopkins.com

Defendants' Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2023, the foregoing was filed electronically. Notice of this filing will be sent to all parties via the Court's electronic filing system. Parties may access this filing through the Court's system. Additionally, the foregoing was served on the Department of Labor via email as follows:

Kenneth M. Rock
Trial Attorney
United States Department of Labor
Office of the Solicitor
1240 East 9th Street, Suite 881
Cleveland, Ohio 44199
Office: (216) 357-5392
Email: rock.kenneth.m@dol.gov

/s/ Robi J. Baishnab
One of Plaintiffs' Attorneys